

RESOLUTION NO. 2008-1813

**A RESOLUTION OF THE TOWN OF SURFSIDE,
FLORIDA APPROVING AGREEMENT FOR
INFORMATION TECHNOLOGIES SERVICES ("IT
SERVICES") BETWEEN THE TOWN AND CALVIN,
GIORANO AND ASSOCIATES, INC., PROVIDING FOR
IMPLEMENTATION OF AGREEMENT, AND PROVIDING
FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Surfside ("Town") is in need of a qualified firm to provide Information Technologies Services ("IT Services") to the Town; and

WHEREAS, pursuant Section 3.12 of the Town Code of Ordinances, the Town Manager has recommended to the Town Commission that it is in the Town's best interest to waive the Town's competitive bidding procedures and to select Calvin, Giordano & Associates, Inc. ("Consultant") to perform the aforementioned services as an independent contractor to Town; and

WHEREAS, the Town Commission has agreed to select Consultant to perform the aforementioned services; and

WHEREAS, Consultant, performs these services for many governmental entities, including other municipalities, and has offered to provide high-level services to the Town for a reasonable cost; and

WHEREAS, the TOWN and Consultant desire to enter into an agreement setting forth the terms and conditions upon which the aforementioned IT Services will be provided by Consultant ("Agreement").

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. Agreement Approved. That the Agreement, in substantially the form attached hereto, between the Town and Consultant is hereby approved, and the Town Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney.

Section 3. Implementation. That the Mayor and Town Manager are hereby authorized to take any and all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED on this 26th day of February, 2008.

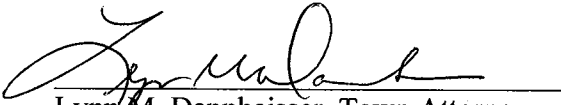


Charles W. Burkett, Mayor

Attest:


Beatris M. Arguelles, CMC
Town Clerk

**APPROVED AND TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

**AGREEMENT FOR
INFORMATION TECHNOLOGY SERVICES
BETWEEN
TOWN OF SURFSIDE, FLORIDA
AND
CALVIN, GIORDANO & ASSOCIATES, INC.**

THIS AGREEMENT is made and entered into this ____ day of February, 2008, by and between the TOWN OF SURFSIDE, a Florida municipal corporation (the "TOWN"), and CALVIN, GIORDANO & ASSOCIATES, INC., a Florida corporation (the "CONSULTANT") (each a "Party", collectively, the "Parties").

WHEREAS, the TOWN is in need of a qualified firm to provide Information Technologies Services ("IT Services") to the TOWN; and

WHEREAS, pursuant Section 3.12 of the TOWN Code of Ordinances, the Town Manager has recommended to the Town Commission that it is in the Town's best interest to waive the TOWN's competitive bidding procedures and to select CONSULTANT to perform the aforementioned services as an independent contractor to TOWN; and

WHEREAS, the Town Commission has agreed to select CONSULTANT to perform the aforementioned services; and

WHEREAS, CONSULTANT, performs these services for many governmental entities, including other municipalities, and has offered to provide high-level services to the TOWN for a reasonable cost; and

WHEREAS, the TOWN and CONSULTANT desire to enter into an agreement setting forth the terms and conditions upon which the aforementioned IT Services will be provided by CONSULTANT.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. INCORPORATION, CONVENIENCE AND INTENT

The foregoing recitations are true and correct and are hereby incorporated by reference. As used in this Agreement, IT Services, shall mean all services that CONSULTANT is required to provide herein.

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SECTION 2. SCOPE OF SERVICES

The CONSULTANT shall provide Information Technologies Services to the TOWN. CONSULTANT will staff a full-time IT professional at Town Hall during normal hours of operation. This position will be supplemented with additional staff as required, covering all aspects of Information Technologies and Network Infrastructures. CONSULTANT specifically agrees to perform the following services more fully described in CGA Proposal No. 07-1132 (the "Proposal") attached hereto as Exhibit "A": IT Assessment, End User/Desktop Support, File Backup, Network File Sharing, Network Print Sharing, Email, Procurement, Policy, Server Maintenance, and Broadcasting. To the extent that this Agreement Conflicts with the Proposal, this Agreement is controlling.

SECTION 3. FEES FOR SERVICES

3.1 CONSULTANT shall perform the Scope of Services for lump sum fee of FIFTY THOUSAND DOLLARS (\$50,000.00) annually. CONSULTANT shall submit monthly invoices for compensation, but only after the services for which the invoices are submitted have been completed and shall submit with such invoice a detailed breakdown, indicating each task performed, person performing the work and time allocated to each task. This breakdown shall be supplied for all work performed by CONSULTANT, whether fixed fee or hourly.

3.2 Broadcasting services shall be billed at a flat rate of TWO HUNDRED DOLLARS (\$200.00) per event, regardless of hours required.

3.3 The following are Additional Services which are not included in this Agreement and will be addressed in separate agreement.

3.3.1 Professional services required due to conditions differing from those itemized under the Scope of Services section of this Agreement or due to events beyond CONSULTANT's control.

3.3.2 Review of Data supplied by TOWN (i.e. GIS data sets, databases, Aerial images, etc.).

3.4 TOWN shall pay CONSULTANT within thirty (30) calendar days of receipt of CONSULTANT's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement. Payment may be withheld for failure of CONSULTANT to comply with a term, condition, or requirement of this Agreement.

3.5 Notwithstanding any provisions of this Agreement to the contrary, TOWN may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by CONSULTANT. When the above reasons for

withholding payments are removed or resolved in a manner satisfactory to TOWN, payment may be made. The amount withheld shall not be subject to payment of interest by TOWN.

3.6 The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, postage, facsimile, courier services, mileage (at a rate approved by the TOWN), photo and reproduction services, fees paid to any governmental authority, renderings, models and mock-ups required by TOWN.

3.7 Preparation for and meeting attendance will be billed by CONSULTANT at a standard hourly rate of ONE HUNDRED AND FIFTY DOLLARS (\$150).

SECTION 4. TERM/TERMINATION

4.1 TERM OF AGREEMENT – This Agreement shall commence on the date that it fully executed by all Parties and shall continue in full force and effect unless and until it is terminated as provided below.

4.2 TERMINATION – This Agreement may be terminated by either Party upon not less than seven (7) days written notice should the other Party fail substantially to perform in accordance with the terms of this Agreement through no fault of the other Party. Failure of TOWN to make payment to CONSULTANT in accordance with this Agreement shall be considered substantial nonperformance and give grounds for termination.

4.3 Upon termination, CONSULTANT shall turn over to TOWN all finished or unfinished work product, documents, data, studies, surveys, sketches, plans and reports in its possession. CONSULTANT shall also reasonably assist the TOWN and any replacement Consultants in the transition, including taking any acts necessary to allow the transfer of the GIS system.

4.4 In the event of termination, the CONSULTANT shall be compensated for services properly performed prior to receipt of notice of termination, together with Reimbursable Expenses then due.

SECTION 5. DEFAULT

5.1 An event of default shall mean a breach of this Agreement. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

- a. CONSULTANT has not performed services on a timely basis;
- b. CONSULTANT has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled Staff personnel;
- c. CONSULTANT has failed to obtain the approval of the TOWN where required by this Agreement;

- d. CONSULTANT has refused or failed, except in the case for which an extension of time is provided, to provide the Services as defined in this Agreement.

5.2. In the event CONSULTANT fails to comply with the provisions of this Agreement, the TOWN may declare the CONSULTANT in default and notify the CONSULTANT in writing. In the event payment has been made for such professional services not completed, the CONSULTANT shall return these sums to the TOWN within ten (10) days after notice that these sums are due. Nothing in this Article shall limit the TOWN's right to terminate, at any time, pursuant to Section 4 above, and its right for damages under Section 5.3.

5.3. In an Event of Default by the CONSULTANT, it shall be liable for all damages resulting from the default.

5.4. The TOWN may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the TOWN. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The TOWN's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the TOWN in law or in equity.

SECTION 6. STATUS REPORTS AND UPDATES

On or before the first day of every month, CONSULTANT shall prepare and deliver to the Town Manager status reports showing the status of all pending work authorizations and projects related to this Agreement.

SECTION 7. HOURS OF OPERATION

CONSULTANT shall maintain fully staffed business hours equal to, but not less than, the Town's business hours of 8 AM to 5 PM, Monday through Friday, with the following holidays accepted:

New Year's Day
Martin Luther King, Jr. Birthday
President's Day
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Day After Thanksgiving Day
Christmas Day

SECTION 8. POLICY OF NON-DISCRIMINATION

CONSULTANT shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONSULTANT shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

SECTION 9. DRUG FREE WORKPLACE

CONSULTANT shall maintain a Drug Free Workplace.

SECTION 10. INDEPENDENT CONSULTANT

CONSULTANT is an independent contractor under this Agreement. Personal services provided by CONSULTANT shall be by employees of CONSULTANT and subject to supervision by CONSULTANT, and not as officers or employees of TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT.

SECTION 11. ASSIGNMENT

Neither this Agreement, nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the Town Manager.

SECTION 12. CONFLICTS OF INTEREST

12.1 CONSULTANT shall not perform any services for any private sector clients (including, but not limited to, developers, corporations, real estate investors, etc.) on projects within the jurisdictional boundaries of the TOWN.

12.2 CONSULTANT acknowledges that, in the course of performing the services, it may originate, develop, receive or otherwise become aware of knowledge and information concerning the TOWN and its plans and that all such knowledge and information, whether oral or written which is developed or acquired by, or communicated or delivered to CONSULTANT or of which CONSULTANT may otherwise become aware are and shall be and remain the confidential information of the TOWN ("Confidential Information"), unless otherwise deemed "public" by law. The CONSULTANT will not use or disclose any information concerning a

recipient of services under this Agreement for any purpose not in conformity with state statute and applicable federal regulations. CONSULTANT further acknowledges that, in the course of performing the services, it may have access to certain other information that relates, directly or indirectly, to the TOWN or its agents, statistical, business or technical research, development, trade secrets, processes, formulae, specifications, programs, software packages, technical know-how, methods and procedures of operation, business or confidential plans ("Proprietary Information"). CONSULTANT affirms that it will not disclose such information and that if it determines that there could be a conflict, or potential conflict of interest, CONSULTANT and/or its agents will immediately advise the Town Manager.

12.3 CONSULTANT shall not review or perform any services regarding any application made by any client of CONSULTANT, even if the services CONSULTANT performs for such client are unrelated to the TOWN. In such instance, CONSULTANT shall disclose the relationship immediately to the Town Manager, who may retain an alternate CONSULTANT for those services. If the services relate to a fixed fee service, the fees for the alternate CONSULTANT shall be deducted from the fixed fee paid to CONSULTANT.

12.4 Neither CONSULTANT nor any of its employees shall have or hold any employment or contractual relationship that is antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

12.5 CONSULTANT shall immediately notify TOWN if any public records are requested of CONSULTANT and/or if issues are discovered by CONSULTANT that may adversely impact TOWN.

12.6 CONSULTANT further agrees to use best efforts to maintain open, honest and direct communication with the Town Manager and Town Attorney in the performance of services required pursuant to this Agreement.

SECTION 13. INDEMNIFICATION

13.1 CONSULTANT shall indemnify, defend and hold harmless TOWN, its officials, appointed officers, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting there from, arising out of any errors, omissions, misconduct or negligent acts, errors or omissions of CONSULTANT, its officials, agents, employees or subcontractors in the performance of the services of CONSULTANT under this Agreement.

13.2 CONSULTANT acknowledges that specific consideration has been paid or will be paid under this Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 14, Insurance.

13.3 CONSULTANT shall indemnify TOWN for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement by CONSULTANT of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the TOWN to the extent that it is based on a claim that products or services furnished to TOWN by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim.

SECTION 14. INSURANCE

14.1 CONSULTANT shall at all times carry professional liability insurance, workers' compensation insurance, comprehensive general liability insurance, and automotive liability insurance with the policy limits outlined below:

- Workers' Compensation Insurance – as required by law.
- Employer's Liability Insurance - \$1,000,000 per occurrence.
- Professional Liability Insurance – \$1,000,000 per occurrence, \$5,000,000 aggregate or dedicated project limits with a deductible (if applicable) not to exceed \$100,000.00 per claim.
- Automobile Liability Insurance - \$500,000 per occurrence, \$500,000 per accident for bodily injury and \$500,000 per accident for property damage.

14.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town Manager or designee prior to the commencement of the work. These Certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida, with financial ratings acceptable to the Town Manager. The TOWN shall be named as an additional insured on all insurance policies.

14.3 In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONSULTANT shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.

SECTION 15. REPRESENTATIVE OF TOWN AND CONSULTANT

15.1 It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager or her designee as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

CONSULTANT designates Hector Perez as the representative of CONSULTANT to whom all communications pertaining to the day-to-day action of this Agreement shall be addressed.

15.2 The Town Manager shall have the right to require CONSULTANT to change any personnel working on TOWN projects upon providing CONSULTANT with a ten (10) day written notice.

SECTION 16. COSTS AND ATTORNEY'S FEES

If either TOWN or CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing Party shall be entitled to recover from the other Party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.

SECTION 17. NOTICES

Whenever either Party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by facsimile transmission with proof of receipt, addressed to the Party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the parties designate the following as the respective places for giving of notice:

FOR CONSULTANT: Dennis J. Giordano, President
Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316
Telephone: (954) 921-7791
Facsimile: (954) 921-8807

FOR TOWN: Pam Brangaccio, Interim Town Manager
Town of Surfside
9293 Harding Street
Surfside, Florida 33154
Telephone: (305) 993-1051
Facsimile: (305) 993-5097

With Copy to:

Lynn Dannheisser, Esq.
Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700

Coral Gables, FL 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

SECTION 18. RIGHTS IN DATA; COPYRIGHTS; DISCLOSURE

18.1 All aspects of GIS data development created by CONSULTANT will be property of the TOWN and will be given to the TOWN at the time of project completion.

18.2 If this Agreement is terminated for any reason prior to completion of the work, the TOWN may, in its discretion, use any design and documents prepared hereunder.

SECTION 19. SUBCONSULTANTS

Subcontractors, if needed, shall be subject to the prior written approval of the Town Manager.

SECTION 20. COMPLIANCE WITH LAWS

CONSULTANT shall fully obey and comply with all laws, ordinances and administrative regulations duly made in accordance therewith, which are or shall become applicable to the services performed under the terms of this Agreement.

SECTION 21. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

SECTION 22. OWNERSHIP OF DOCUMENTS

CONSULTANT understands and agrees that any information, document, report or any other material whatsoever which is given by the TOWN to CONSULTANT or which is otherwise obtained or prepared by CONSULTANT under the terms of this Agreement is and shall at all times remain the property of the TOWN. CONSULTANT agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of the Town Manager, which may be withheld or conditioned by the Town Manager in his sole discretion.

SECTION 23. AUDIT AND INSPECTION RIGHTS

23.1 The TOWN may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by CONSULTANT under this Agreement, audit, or cause to be audited, those books and records of CONSULTANT that are related to CONSULTANT's performance under this Agreement. CONSULTANT agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

23.2 The TOWN may, at reasonable times during the term hereof, inspect CONSULTANT's facilities and perform such inspections, as the TOWN deems reasonably necessary, to determine whether the services required to be provided by CONSULTANT under this Agreement conform to the terms of this Agreement. CONSULTANT shall make available to the TOWN all reasonable facilities and assistance to facilitate the performance of inspections by the TOWN's representatives.

SECTION 24. WARRANTIES OF CONSULTANT

The CONSULTANT hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary to perform the Services.

SECTION 25. PUBLIC RECORDS

CONSULTANT understands that the public shall have access, at all reasonable times, to all documents and information pertaining to TOWN contracts, subject to the provision of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosure under applicable law. CONSULTANT's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the TOWN.

SECTION 26. GOVERNING LAW; CONSENT TO JURISDICTION

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Miami-Dade County, Florida.

SECTION 27. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 29. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the

application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 30. CONFLICT

In the event of a conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail.

SECTION 31. BINDING AUTHORITY

Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

SECTION 32. SURVIVAL OF PROVISIONS

Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either Party.

SECTION 33. ENTIRE AGREEMENT

33.1 This Agreement and its attachments constitute the entire agreement between CONSULTANT and TOWN, and all negotiations and oral understandings between the parties are merged herein. In case of conflict between this Agreement and its attachments, this Agreement shall prevail.

33.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 34. WAIVER

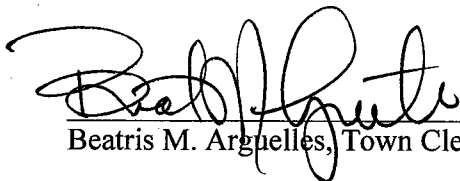
The waiver by either Party of any failure on the part of the other Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement for IT Services on the respective dates under each signature: Town of Surfside through its Town Commission, signing by and through its Mayor, authorized to execute same by Commission

action on the 26th day of Feb, 2008; and Dennis J. Giordano authorized to execute same

Attest:

TOWN OF SURFSIDE


Beatris M. Arguelles, Town Clerk

By: _____
Pam Brangaccio, Interim Town Manager

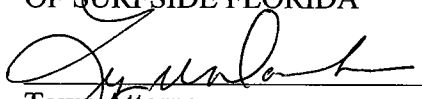
Date: _____

CALVIN GIORDANO & ASSOC.IATES,
INC.

By: _____
Dennis J. Giordano, President

Date: _____

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE TOWN
OF SURFSIDE FLORIDA


Town Attorney

Lynn M. Dannheisser